United Nations CAT/C/56/D/591/2014

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
17 February 2016

Original: English

Committee against Torture

Communication No. 591/2014

Decision adopted by the Committee at its fifty-sixth session (9 November-9 December 2015)

Submitted by:	K (not represented by counsel)
Alleged victim:	The complainant
State party:	Australia
Date of complaint:	17 March 2014 (initial submission)
Date of present decision:	25 November 2015
Subject matter:	Deportation to Sri Lanka
Procedural issue:	Failure to substantiate complaint
Substantive issue:	Risk of torture upon return to country of origin
Article of the Convention:	3

GE.16-02288(E)

Please recycle

Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-sixth session)

concerning

Communication No. 591/2014*

Submitted by:	K (not represented by counsel)
Alleged victim:	The complainant
State party:	Australia
Date of complaint:	17 March 2014 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 25 November 2015,

Having concluded its consideration of complaint No. 591/2014, submitted to it by K under article 22 of the Convention,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following:

Decision under article 22 (7) of the Convention

1.1 The complainant is K, a Sri Lankan national born in 1986. He claims that his deportation to Sri Lanka would constitute a violation by Australia of article 3 of the Convention. The complainant is not represented by counsel. Australia made the declaration under article 22 of the Convention on 28 January 1993.

1.2 On 18 March 2014, in application of rule 114, paragraph 1, of its rules of procedure, the Committee requested the State party not to deport the complainant to Sri Lanka while the complaint was being considered by the Committee. On 7 April 2015, the State party requested the Committee to lift its request for interim measures. On 16 April 2015, the Committee denied the State party's request to lift the interim measures. On 26 May 2015, the Committee reiterated its request for interim measures. On 29 May 2015, the State party made a second request to lift the interim measures. On 1 June 2015, the Committee again denied the State party's request to lift the interim measures.

* The following members of the Committee participated in the consideration of the present communication: Essadia Belmir, Alessio Bruni, Satyabhoosun Gupt Domah, Abdoulaye Gaye, Sapana Pradhan-Malla, Jens Modvig, George Tugushi and Kening Zhang.

The facts as presented by the complainant

2.1 The complainant worked as a goldsmith in Sri Lanka from 2000 until 2010. In May 2010, he hosted some cadres of the Liberation Tigers of Tamil Eelam (LTTE) in his home in Negombo, Sri Lanka. The cadres had escaped from internment camps. The complainant helped them to obtain passports to leave the country and, at the same time, obtained a passport for himself, as he knew he might have to flee the country at short notice if his association with the LTTE was discovered.

2.2 On an unspecified date, the complainant had a dispute with a foreign national regarding some missing gold. He believes that that person may have told the Criminal Investigation Department that he was an LTTE supporter.

2.3 On 17 September 2010, the Criminal Investigation Department searched the complainant's house and found a laptop and three cameras belonging to the LTTE. Because of the LTTE material found in his house and because he had hosted LTTE cadres in his home, the complainant was arrested and taken to the Criminal Investigation Department office at Thelwatte Junction, Negombo, where he was tortured. After one week, the complainant was released after his father had paid a bribe to the Department officers.

2.4 The complainant remained in hiding at two different addresses in Colombo before he decided to leave as it was no longer safe for him to be in Sri Lanka. He managed to leave the country by bribing relevant officers. The complainant first traveled to Kenya on a three-month visa, where he stayed from 23 September 2010 to 16 December 2010. When the visa expired, he went to Côte d'Ivoire on a six-month visa and stayed there from 16 December 2010 to 28 May 2011. Upon expiration of that visa, he tried to go to Dubai, but was refused entry, and therefore had no option but to return to Sri Lanka on 30 May 2011. His uncle bribed the relevant airport officials to secure his release and traveled with him to Batticaloa, Sri Lanka. The complainant's uncle was assaulted on 9 June 2011 for having provided the complainant with assistance and for not revealing his whereabouts.

2.5 The complainant states that, on 12 May 2011, his father was shot dead by the military. He alleges that his father was shot because he had been instrumental in securing the complainant's release from the Criminal Investigation Department and had refused to give details when questioned about the complainant's whereabouts.

2.6 On an unspecified date in 2011, the complainant went into hiding at St. John's Church in Batticaloa until 30 January 2012. He then left for Australia by boat on 2 February 2012. He arrived in Australia illegally on 17 February 2012. The entry interview was held at Scherger Detention Centre on 23 March 2012. On 22 May 2012, the complainant applied to the Minister of Immigration for a protection visa; however, his application was denied on 17 August 2012. He then filed an application for review before the Refugee Review Tribunal, which was denied on 14 May 2013, as the Tribunal considered that the complainant's story lacked credibility. The complainant notes that one of the reasons why the Tribunal assumed that his story was not credible was because he referred to the church in which he had sought refuge as St. John's Church and later at St. Anthony's Church. The Tribunal noted that, "if the applicant had been staying with a father in a church as he claims for over six months, the applicant would know the father's name and be sure about the church where he stayed". In that connection, the complainant submits that, in English, the church is referred to as St. John de Britto's Church, but in Tamil it is called "Punitha Arulananthar Alayam" translated as St. Arunlananthar Church. The complainant stated that he had stayed at the Arulananthar Church, which, he assumes, the translator had translated as St. Anthony's Church during the proceedings.

2.7 On an unspecified date, the complainant appealed the Refugee Review Tribunal's decision before the Federal Circuit Court of Australia. On 3 September 2013, the Circuit Court upheld the Tribunal's decision and dismissed the complainant's appeal. The

complainant applied for leave to appeal the Circuit Court's negative decision before the Federal Court of Australia, but his request was denied on 20 November 2013. On 26 November 2013, the complainant filed a request for ministerial intervention, which was denied on 6 March 2014. On 17 March 2014, the complainant again requested ministerial intervention, which was also denied on an unspecified date.

The complaint

3.1 The complainant claims that he will be detained, tortured and killed if deported to Sri Lanka because he is a young man of Tamil ethnicity and is already wanted by the Sri Lankan authorities owing to his history of association with the LTTE.

3.2 In addition, the complainant claims that he will run the same risks if deported to Sri Lanka owing to his status as a failed asylum seeker. He states that, in February 2014, the Australian Department of Immigration inadvertently published on its website the full names, nationalities, locations, arrival dates and boat arrival information of about 10,000 asylum seekers. The complainant submits that that has created a further risk for him, because if the information is accessed by the Sri Lankan Government, he will be further persecuted.

State party's observations on admissibility and the merits

4.1 On 15 September 2014, the State party submitted that article 3 of the Convention provides that States parties have an obligation not to return a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture.[1] In its views concerning *G.R.B. v. Sweden*, the Committee confirmed that the obligation under article 3 is directly linked to the definition of torture in article 1 of the Convention.[2] The Committee also noted that, under the definition of torture, several elements must exist for an act to constitute torture: the act must cause a person severe pain or suffering, which may be mental or physical; the act must be intentionally inflicted on a person or on a third person for the purposes of obtaining information, extracting a confession, punishment for an act that the person or a third person allegedly committed, intimidation or coercion, or for any reason based on discrimination of any kind; and the act must be inflicted by, or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity.[3]

4.2 The State party notes that each case must be assessed on its own facts. Whether conduct amounts to torture will depend on the nature of the alleged act and the obligation of non-refoulement is confined to torture and does not extend to cruel, inhuman or degrading treatment or punishment.[4] In this connection, the State party submits that the Committee has retained this distinction in its views. Furthermore, if it is established that the alleged acts would constitute torture, article 3 also requires that there exist "substantial grounds for believing" that the author would be in danger of being subjected to torture. That is, the complainant must be at a "foreseeable, real and personal risk of

[1] See, for example, communication No. 39/1996, *Paez v. Sweden*, Views adopted on 28 April 1997, para. 14.5.

[2] See communication No. 83/1997, *G.R.B. v. Sweden*, Views adopted on 15 May 1998, para. 6.5; also the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22, para. 1.

[3] See *G.R.B. v. Sweden*, para. 6.5.

[4] See the Committee's general comment No. 1, para. 1.

being subjected to torture".[5] The Committee has also stated that the danger must be "personal and present".[6] In order to show that a State party would be in breach of its non-refoulement obligations under article 3 of the Convention, an individual must be found to be personally at risk of such treatment should he or she be returned to a country. In addition, the onus of proving that there is "a foreseeable, real and personal risk of being subjected to torture" upon extradition or deportation rests on the complainant.[7] The risk must be assessed on grounds that go beyond mere theory and suspicion.[8]

4.3 In the light of the above, the State party submits that the complainant's claims are inadmissible pursuant to rule 113 (b) of the Committee's rules of procedure on the grounds that the present claims are manifestly unfounded. The Committee has also stated that it is the responsibility of the complainant to establish a prima facie case that there is a foreseeable, real and personal risk he would be subjected to torture by the Sri Lankan authorities if returned to Sri Lanka.[9] In this connection, the State party maintains that the complainant has failed to do so. In the alternative, the State party submits that the complainant's claims are without merit.

4.4 The State party adds that the complainant's claims have been thoroughly considered by a number of domestic authorities and review bodies, including the Federal Circuit Court of Australia. Each body specifically considered the claims and determined that the complainant was not at a foreseeable, real or personal risk of torture under article 3 of the Convention if returned to Sri Lanka. In particular, the complainant's claims were assessed under the complementary protection provisions in subparagraph 36 (2) (aa) of the Migration Act (1958), which contain the State party's non-refoulement obligations under, inter alia, the Convention. It notes that the complainant has not provided any relevant new evidence in his submissions to the Committee that have not already been considered through those domestic administrative and judicial proceedings. In this regard, the State party refers to the Committee's general comment No. 1, in which it is stated that the Committee is not an appellate or judicial body and that it gives considerable weight "to findings of fact that are made by the organs of the State party concerned" (para. 9 (a)). The State party therefore requests that the Committee accept that it has thoroughly assessed the complainant's claims in its domestic proceedings and found that it does not owe the complainant protection obligations under the Convention. In that connection, it submits that it takes its obligations under the Convention seriously and has implemented those obligations in good faith through its domestic migration processes.

4.5 The State party acknowledges that "complete accuracy can seldom be accepted by victims of torture";[10] however, that factor was taken into consideration by the domestic authorities in forming the views on the complainant's credibility. It notes that in assessing the complainant's protection visa application, a reasonable margin of appreciation was given to flaws and inconsistencies in his testimony.

4.6 The State party notes that the complainant's claims were considered during the protection visa proceedings, as well as in the external merits review by the Refugee Review Tribunal, the judicial review by the Federal Circuit Court, the review of the

[5] See communication No. 203/2002, *A.R. v. the Netherlands*, decision adopted on 14 November 2003, para. 7.3.

[6] Ibid.; see also the Committee's general comment No. 1, para. 7.

[7] See the Committee's general comment No. 1, para. 7.

[8] Ibid., para. 6.

[9] Ibid., para. 4; also see *G.R.B. v. Sweden*.

[10] See communication No. 21/1995, *Alan v. Sweden*, Views adopted on 8 May 1996, para. 11.3.

complainant's appeal of the Federal Circuit Court's decision before the Full Federal Court, and the review of his requests for ministerial intervention of 26 September 2013 and 19 March 2014.

4.7 In particular, the complainant lodged an application for a protection visa on 22 May 2012. He was granted a Bridging Visa on 3 July 2012 while his protection visa application was under consideration by the then Department of Immigration and Citizenship (now the Department of Immigration and Border Protection). On 17 August 2012, the complainant's protection visa application was refused.

4.8 The State party submits that the authorities interviewed the complainant (with assistance of an interpreter) and also considered other relevant material, such as country information provided by the Australian Department of Foreign Affairs and Trade. The authorities considered all of the claims made by the complainant in his submission to the Committee and found the claims that he was told to leave Sri Lanka by the Criminal Investigation Department, that he continues to be of interest to the Sri Lankan authorities, that he hid in St. John's Church in Batticaloa, and that armed men from the Criminal Investigation Department had attacked his uncle were not credible. The authorities also concluded that the complainant does not have a significant profile that would draw particular attention of the Sri Lankan authorities and that as the majority of his family resides in Sri Lanka unharmed, his fear is based on a generalized or unsubstantiated fear. Therefore, given that it did not have substantial grounds for believing that the complainant would face a foreseeable, real and personal risk of harm, the authorities rejected his protection visa application.

4.9 The complainant subsequently filed an application for an external merits review with the Refugee Review Tribunal. Such review is normally carried out by a special external review body that provides a full and independent review of decisions concerning protection visas. On 14 May 2013, the Tribunal affirmed the Department of Immigration and Border Protection's decision not to grant the complainant a protection visa. In that connection, the State party notes that the complainant was present at the Tribunal hearing and was represented by a registered migration officer. He was able to make oral submissions with the assistance of an interpreter.

4.10 The Refugee Review Tribunal did not accept as credible the complainant's claims: that he left Sri Lanka in either 2010 or 2012 because he feared being harmed by the Sri Lankan authorities; that he was detained for the reasons he claimed in September 2010; that he left Sri Lanka because the Criminal Investigation Department had threatened him and told him to leave the country; that he was hiding at any time for the reasons claimed; or that his uncle was assaulted and his father was killed for the reasons claimed. Furthermore, the Tribunal found that if the complainant was of interest to the Criminal Investigation Department as claimed, he would not have been able to re-enter Sri Lanka in 2011 following his travels in Africa without attracting the authorities' attention. The Tribunal concluded that there were no substantial grounds for believing that there was a real risk of the complainant being subjected to torture if removed to Sri Lanka.

4.11 The State party also notes that, on 3 September 2013, the Federal Circuit Court dismissed the complainant's application for judicial review of the Refugee Review Tribunal's decision. The complainant was present at the Circuit Court hearing and made oral submissions. In particular, the Circuit Court concluded that the complainant was not able to point to any procedural error on the part of the Tribunal. Thereafter, the complainant applied for leave to appeal the Circuit Court decision; on 20 November 2013, the Full Federal Court of Australia dismissed his application, stating that no error had been made by either the Refugee Review Tribunal or the Federal Circuit Court. In

that regard, the State party notes that the complainant was present at the hearing of his application for special leave and could have made oral submissions.

4.12 On 26 November 2013, the complainant filed a request for ministerial intervention under sections 417 and 48B of the Migration Act. The claims made by the complainant were assessed again in full, with consideration also given to the decisions of the Refugee Review Tribunal and the Federal Circuit Court; however, his request for ministerial intervention was rejected as he had not provided any further information to justify ministerial intervention.

4.13 The State party further notes that, on 19 March 2014, the complainant made a second request for ministerial intervention. His claims were again assessed and it was concluded that the complainant had not made any new protection claims that had not been raised already in his initial application, nor provided any new information that would enhance his chances of making a successful protection visa application. Consequently, the complainant's request did not meet the guidelines for referral to the Minister and was rejected.

4.14 In the light of the above, the State party maintains that all of the complainant's claims were considered and all evidence provided was verified by the domestic authorities at every stage of the complainant's review process. All of the processes concluded that there are no substantial grounds for believing that the complainant is at a foreseeable, real and personal risk of torture if returned to Sri Lanka.

4.15 Regarding the name of the church, the State party notes that the complainant claims that one of the reasons the Refugee Review Tribunal "assumed" that his story was not credible was because of the confusion about the name of the church in which he allegedly sought refuge from mid-2011 to February 2012. In that regard, the State party submits that it was reasonable for the Tribunal to reach those conclusions as the complainant was present at the hearing and had the opportunity to clarify his statements with the assistance of an interpreter. In any event, the Tribunal's views with regard to the complainant's credibility were not founded solely on the matter of the name of the church. The Tribunal relied on a culmination of factors in reaching that conclusion, including the fact that the complainant re-entered Sri Lanka in 2011 without attracting the attention of the Sri Lankan authorities, despite allegedly being of interest to the Criminal Investigation Department.

4.16 The protection visa assessment and the subsequent ministerial intervention assessments understood that the correct name of the church was the "St. John de Britto Church", as submitted by the complainant, and arrived at the conclusion that the complainant's claims were not credible. The complainant raised the issue in his second request for ministerial intervention and it was similarly determined that the alleged confusion regarding the name of the church was not the reason why the Tribunal did not find his evidence to be credible.

4.17 In the light of the above, the State party submits that the complainant's submissions concerning the name of the church do not undermine the conclusion consistently reached by all the authorities that the complainant is not at a foreseeable, real or personal risk of torture in Sri Lanka.

4.18 As to the complainant's claim regarding the data breach, whereby the personal details of a number of individuals were inadvertently posted on the website of the Department of Immigration and Border Protection, the State party submits that the complainant was not affected by the data breach as the data pertained only to persons in detention on 31 January 2014 and the complainant was not in detention at that time. As such, the complainant's personal details have not been released publicly.

4.19 Finally, with regard to the complainant's claim that because he is a failed asylum seeker, he will be subjected to torture and killed if returned to Sri Lanka, the State party notes that the complainant has not provided any country information in support of that claim. In that regard, the State party acknowledges that article 3 (2) of the Convention requires all relevant considerations to be taken into account when determining whether article 3 (1) is engaged, including the existence in the State concerned of a "consistent pattern of gross, flagrant or mass violations of human rights". However, the State party notes that the existence of a general risk of violence does not constitute sufficient grounds for determining that a particular person would be in danger of being subjected to torture upon return to that country. Additional grounds must exist to show that the individual concerned would be personally at risk of torture.[11] As submitted above, the State party maintains that the complainant has not established the existence of additional grounds to show that he is at a foreseeable, real and personal risk of torture if returned to Sri Lanka.

4.20 In addition, the State party submits that extensive country information on Sri Lanka and the return of failed asylum seekers specifically was also carefully considered throughout the domestic processes. In particular, during the complainant's protection visa application review, material before the authorities included country information from the Department of Foreign Affairs and Trade and non-governmental organizations (such as Amnesty International) as well as guidance from the Office of the United Nations High Commissioner for Refugees' (UNHCR) Handbook.

4.21 Furthermore, the Refugee Review Tribunal had considered a wide range of country information pertaining to Sri Lanka, including information specifically relating to failed asylum seekers returning to Sri Lanka. The Tribunal accepted that, since failed asylum seekers would have generally left Sri Lanka illegally, they would be dealt with under the relevant laws of Sri Lanka, which are of general application. However, the Tribunal did not accept that laws of general application would be applied to the complainant discriminatorily because he is a Tamil, nor that he would be subject to significant harm for those reasons.

4.22 Moreover, during the assessments of the complainant's requests for ministerial intervention, the country information provided by the Department of Foreign Affairs and Trade was considered, and it was verified that, while failed asylum seekers are detained on return to Sri Lanka under laws relating to leaving the country illegally, all persons are granted bail if a family member stands as guarantor, with no discrimination on the basis of ethnicity or religion. It was noted that the complainant has family members — his mother and three sisters — residing in Sri Lanka who can assist him, and there is no information to indicate that he would not be granted bail or that he would be discriminated against or tortured because he is a failed asylum seeker and/or Tamil.

Complainant's comments on the State party's observations

5.1 On 16 March 2015, the complainant submitted his comments on the State party's observations, noting that he had stated to the Refugee Review Tribunal that, inter alia, he was born in Periya porathivu, Batticaloa district, Sri Lanka, an area that was controlled by the Liberation Tigers of Tamil Eelam (LTTE), he was not involved in the fighting with the Sri Lankan armed forces, but that he and his family "rendered moral support and financial support to the LTTE in their arms struggle". After the war ended, many LTTE cadres left Sri Lanka from the international airport in Colombo and, since his and his family's residence was in Negombo, which is near the airport, many cadres stayed in their house. The complainant reiterates that he hosted some LTTE members in their

[11] See *G.R.B. v. Sweden*, para. 6.3.

family home in 2010 and helped them to obtain passports. He submits that a foreign national of Tamil origin was introduced to him by the LTTE members. Prior to leaving Sri Lanka for India, the person asked the complainant to take care of his possessions and keep them at his place and he had agreed. There was some jewellery among the person's belongings and, for safety reasons, the complainant gave the jewellery to another friend until the person came back. A week later, the complainant went to Batticaloa to visit his mother. When he came back to Negombo, he asked the friend to return the jewellery, but the friend refused, saying that if the complainant continued to insist that he return the jewellery, he would denounce him to the Criminal Investigation Department and accuse him of having links to the LTTE. In the meantime, the Investigation Department had learned that LTTE members had stayed at the complainant's house. The complainant was arrested by the Criminal Investigation Department on 17 September 2010. He was released three days later, when his father paid a bribe, and the Investigation Department told him to leave the country as soon as possible. He reiterates his story concerning his travel to Africa, his return to Sri Lanka, his uncle's help and his hiding in a church until 30 January 2012, after he had returned to his village in June 2011, and was told that the Criminal Investigation Department was looking for him and he was advised by his mother to leave the village.

5.2 The complainant maintains that, since he is "a wanted person and not a recognized asylum seeker", he will be detained in Sri Lanka upon return and he fears that he will be tortured and killed. He submits that he told the Department of Immigration and Border Protection and the Refugee Review Tribunal that he would be subjected to torture upon return to Sri Lanka, owing to his family's and his own involvement with the LTTE. He notes that the current situation in Sri Lanka "illustrates how people who had connections with the LTTE had undergone severe torture at the hands of the police and army personals". He claims that it is still happening even after the regime has changed. In that regard, the complainant states that a Tamil, who had recently been returned from Dubai, as well as six other Sri Lankans, who had been deported from Italy, were arrested and tortured in Colombo. He submits that he cannot provide any documents attesting to his arrest and detention, as the police did not "file the case". He emphasizes that, as a young Tamil coming from a particular place in Sri Lanka, he fears being subjected to arrest and torture upon return. The complainant provides several publications about arrests, including at the airport, and killings of ethnic Tamils connected to or suspected of being connected to the LTTE.

5.3 The complainant further submits that, even though he was given the opportunity to make submissions before the Australian authorities, the respective authorities did not take into account the fact that his father was shot, nor did they request information about the circumstances of his father's death or take into account the fact that his uncle was ill-treated for helping him, among other things. In that regard, the complainant notes that he gave all the information concerning his risk of persecution and all the documents to support his claims. He also reiterates his arguments about the name of the church in which he had sought refuge until 30 January 2012. The complainant further refers to a report, which states that even if a deportee is released on bail, "either cash or personnel", that person is not fully free nor has the freedom to live in his native place if it is in the north or east, because one of the bail conditions is to appear in court in the south (Negombo) at regular intervals. He notes that some of the cases have stretched over five years and during that period, the person cannot be employed or leave the country for any reason.

5.4 The complainant submits that he was detained in Sri Lanka in 2010 for about three days and that the police inquiry was mainly about the two people who had stayed at his house. He maintains that, as a result of the "assault and torture" he had endured while

in detention, he has nightmares and sleep difficulties. In that regard, he states that he has been referred to several mental-health counsellors.

5.5 Regarding the data breach by the Department of Immigration and Border Protection, he affirms that he has never been in any detention centre in Australia and that his personal details were not disclosed.

5.6 Regarding the current situation in Sri Lanka, the complainant refers to a publication dated 7 March 2015, in which it is stated that "any returnee will be harassed at the airport". The complainant submits that the bail conditions are severe and it takes years to be released owing to the lengthy court proceedings. Also, every time the court adjourns, the deportee incurs costs in relation to court appearances. He states that travel from the east (Batticaloa) to the south (Negombo), hotel accommodation, retaining the services of a defence lawyer and paying the fees are a very high cost for the returnee. He emphasizes that it is not a one-off cost; it may last for a substantial period of time.

5.7 With regard to the State party's argument that the complainant has family in Sri Lanka, the complainant submits that his mother is very old and cannot travel to Negombo and that his three sisters have their own families. In addition, he does not want to expose his mother and sisters to any ill-treatment, given that his uncle was assaulted for helping him.

5.8 On 24 May 2015, the complainant submits that he was detained by the State party's immigration authorities on 21 May 2015 with a view to deporting him and that he fears persecution and risk to his safety if deported to Sri Lanka.

State party's additional observations

6.1 On 29 May 2015, the State party refers to, inter alia, its observations on the admissibility and merits of 15 September 2014 and reiterates that it has considered the complainant's claims and additional submissions and found that there is no new and credible information to support his claims.

6.2 The State party notes that the complainant's additional submissions of 16 March 2015 and 24 May 2015 were also considered. It notes that the complainant's claims that one of the reasons why the Refugee Review Tribunal "assumed" that his story was not credible was because of the confusion concerning the name of the church in which he had allegedly sought refuge from mid-2011 to February 2012. In that regard, the State party submits that it was reasonable for the Refugee Review Tribunal to reach those conclusions since the complainant was present at the hearing and was given the opportunity to clarify his statements with the assistance of an interpreter. In any event, the State party reiterates that the Tribunal's conclusion regarding the complainant's credibility were not based solely on the matter of the name of the church. The Tribunal relied on a culmination of factors in reaching its conclusion, including how the complainant re-entered Sri Lanka in 2011 without attracting the interest of the Sri Lankan authorities, despite allegedly being of interest to the Criminal Investigation Department.

6.3 With regard to returning individuals to Sri Lanka, the State party submits that the complainant's claims of being an LTTE supporter were extensively considered in the assessment of his protection visa application, the Tribunal review and the assessments of his requests for ministerial intervention. Each procedure found that the complainant's claims lacked credibility and/or did not give rise to a specific profile that would place him at risk of harm if returned to Sri Lanka. Taking into account the most recent country information, the Department of Immigration and Border Protection assessed the complainant's additional submissions of 16 March 2015 and 24 May 2015 and concluded that there was no new and credible, relevant information that had not been

previously assessed. The Department was satisfied that there continued to be no substantial grounds for believing there is a real risk of harm for the complainant.

6.4 The State party further notes that the complainant states that, as a failed asylum seeker, he fears being tortured and killed upon return to Sri Lanka. The State party reiterates that extensive country information on Sri Lanka and the return of failed asylum seekers specifically had also been carefully considered at the domestic level. For example, during the review of the protection visa application, the authorities considered country information provided by the Department of Foreign Affairs and Trade and non-governmental organizations, as well as guidance in the UNHCR Handbook. Furthermore, the Refugee Review Tribunal had also considered a wide range of country information pertaining to Sri Lanka, including information specifically relating to failed asylum seekers. Finally, in the assessments of the complainant's requests for ministerial intervention, country information provided by the Department of Foreign Affairs and Trade was considered, and it was verified that, while failed asylum seekers are detained upon return to Sri Lanka under the laws relating to leaving the country illegally, all such detainees are granted bail if a family member stands as guarantor. It was noted that the complainant has family members who could assist him and it was considered that there was no information indicating that he would not be granted bail or that he would be discriminated against or tortured because he is a failed asylum seeker and/or Tamil.

Complainant's additional comments

7.1 On 6 August 2015, the complainant reiterates that his life would be in danger if returned to Sri Lanka. He states that he has become "mentally up-set", suffers from "stress and trauma", has tried to commit suicide and had to be treated for one week in a mental hospital because of this. He further submits that, on 21 May 2015, he was detained in the Villawood Immigration Detention Centre and, on 20 July 2015, he was transferred to the Christmas Island Centre.

Additional submissions by the parties

8.1 On 9 September 2015, the State party submits that the Department of Immigration and Border Protection had already assessed the information included in the complainant's additional submission of August 2015 and a police report dated 17 September 2010 in the assessment of his request for ministerial intervention in July 2015. However, the departmental authorities did not accept the police report as genuine and formed the view that it was not credible that the complainant did not provide the document at an earlier stage while his protection claims were being assessed or reviewed. In that regard, the State party maintains that the complainant has not provided sufficient evidence to substantiate his claims that he has a profile as a Tamil man and as an LTTE sympathizer or supporter that would attract the attention of the Sri Lankan authorities upon return to Sri Lanka, as to engage the State party's non-refoulement obligations under article 3 of the Convention.

8.2 On 16 October 2015, the complainant explains that he did not submit the police report of 17 September 2010 earlier as he did not want the State party's authorities to think that he was involved with the LTTE, as he had only "helped" some of its members when they came to Colombo. He has never taken up arms or been involved in their militant activities. He highlights that the report is genuine and that it was issued by the Negombo police on the day of his arrest. The complainant also reiterates that his father was killed because he refused to disclose his whereabouts.

8.3 On 8 November 2015, the complainant submits that, inter alia, upon arrival in Australia, he was advised "not to talk about any LTTE connections" as the authorities would detain him indefinitely in detention centres. He further states that he did not have

the police report of 17 September 2010 when he arrived in Australia and, later, when he received it, he did not want to disclose it as proof of his arrest to the State party's authorities. In that regard, he notes that, at his request, a lawyer in Sri Lanka, a Mr. L.D., went to the police station in Negombo and compared the police records without revealing the complainant's name.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 Before considering any complaint submitted in a communication, the Committee against Torture must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

9.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that in the present case, the State party has not contested that the complainant has not exhausted all available domestic remedies.[12] The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

9.3 The Committee notes that the State party has contested the admissibility of the complaint on the grounds that the complainant's claims are manifestly unfounded. In the light of the information on file and the arguments presented by the parties, however, the Committee considers that, for purpose of admissibility, the complainant has sufficiently substantiated his claims that there is a foreseeable, real and personal risk he would be subjected to torture if he is deported to Sri Lanka, as his present claims raise serious issues under the Convention which should be considered by the Committee at the merits stage. Accordingly, the Committee finds that the communication is admissible.

9.4 As the Committee finds no further obstacles to admissibility, it declares the communication submitted under article 3 of the Convention admissible and proceeds with its consideration of the merits.

Consideration of the merits

10.1 In accordance with article 22 (4) of the Convention, the Committee has considered the present communication in the light of all information made available to it by the parties concerned.

10.2 In the present case, the issue before the Committee is whether the return of the complainant to Sri Lanka would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return ("refouler") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

10.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Sri Lanka. In assessing that risk, the Committee must take into account all relevant

[12] See, for example, communication No. 455/2011, *X.Q.L. v. Australia*, decision adopted on 2 May 2014, para. 8.2.

considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of the evaluation is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.[13]

10.4 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being highly probable (para. 6), the Committee recalls that the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a foreseeable, real and personal risk.[14] Although, under the terms of its general comment No. 1, the Committee is free to assess the facts on the basis of the full set of circumstances in every case, considerable weight is given to the findings of fact that are made by organs of the State party concerned (para. 9).[15]

10.5 In the present case, the complainant claims that he will be detained and tortured if he is returned to Sri Lanka as he is a young man of Tamil ethnicity and is wanted by the Sri Lankan authorities owing to his history of association with the Liberation Tigers of Tamil Eelam (LTTE). In that connection, he claims that he was subjected to ill-treatment while he was detained in Sri Lanka by the Criminal Investigation Department from 17 to 20 September 2010, as the Department had found a number of items belonging to LTTE members in his house. The complainant also claims that he will risk being subjected to torture given his status as a failed asylum seeker. The Committee takes note of the State party's submission that, in the present case, the complainant has not provided credible evidence and has failed to substantiate that there was a foreseeable, real and personal risk that he would be subjected to torture by the authorities if he is returned to Sri Lanka; that his claims have been reviewed by the competent domestic authorities, in accordance with domestic legislation and taking into account the current human rights situation in Sri Lanka; and that the domestic authorities were not convinced that the complainant fell within the category of persons entitled to protection under the 1951 Convention relating to the Status of Refugees.

10.6 In the light of the above and taking into account the information provided by the parties, the Committee is of the view that there are inconsistencies in the complainant's story that undermine the credibility of his claims that he would be at risk of being subjected to torture by the authorities upon return to Sri Lanka given that he is a young man of Tamil ethnicity and that he is wanted by the Sri Lankan authorities owing to his association with the LTTE. The Committee is also of the view that the complainant has not submitted any objective evidence to substantiate his claim. In particular, the Committee notes that the complainant claims that he was tortured by the Criminal Investigation Department while in detention in Sri Lanka in September 2010. In that regard, the Committee notes that in his

[13] See, for example, communication No. 550/2013, *S.K. and others v. Sweden*, decision adopted on 8 May 2015, para. 7.3.

[14] See also *A.R. v. the Netherlands*, para. 7.3.

[15] See, for example, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010, para. 7.3.

initial complaint to the Committee, the complainant claimed that he had been detained by the Criminal Investigation Department in Thelwatte Junction for one week in September 2010, but he told the State party's authorities and claimed in his subsequent submissions to the Committee that he was detained by the police in Negombo Police Station for three days. Furthermore, the complainant has not provided any details whatsoever, neither to the State party's authorities nor to the Committee, about the ill-treatment he allegedly suffered during his detention, that is, information regarding the method of torture, details about the context, the alleged perpetrators (such as names, number of perpetrators, etc.), whether he had sought medical assistance in Sri Lanka after the alleged incident and whether he is in possession of any medical documentation in that regard. The Committee observes that, although the complainant has attached a copy of a medical certificate concerning his mental health, the document in question was issued on 13 March 2015 and contains no details whatsoever about the ill-treatment that he allegedly suffered in Sri Lanka.

10.7 The Committee observes that the complainant left Sri Lanka on 23 September 2010 and travelled to Kenya and later to Côte d'Ivoire, before returning to Sri Lanka on 30 May 2011, after his visas had expired and he was refused entry to Dubai. In that regard, the Committee notes the State party's argument that its authorities did not accept as credible the complainant's claims that he left Sri Lanka in 2010 and again in 2012 because he feared harm from the Sri Lankan authorities. In the State party's view, if the complainant was of such interest to the Criminal Investigation Department as claimed, he would not have been able to re-enter Sri Lanka following his travels in Africa in 2011, without coming to the attention to the authorities. In addition, the Committee notes that, in his communication, the complainant states that upon his return to Sri Lanka on 30 May 2011, he was detained at the airport, then released with the help of his uncle who had paid a bribe. However, the Committee observes that the complainant told the Refugee Review Tribunal that he had not been detained upon arrival in Sri Lanka in 2011 and that he had entered the country without any problems.

10.8 The Committee notes the complainant's claim that, after he returned to Sri Lanka on 30 May 2011, he went into hiding in St. John's Church and stayed there until 30 January 2012, because the Criminal Investigation Department was still looking for him. In that connection and notwithstanding the matter of the name of the church in which he found refuge, the Committee notes that the complainant stayed in Sri Lanka for a considerable period of time (at least eight months) following his return on 30 May 2011, without experiencing any problems, before travelling to Australia on 2 February 2012. The Committee further notes that the complainant does not claim that he participated in any political activities or movements opposing the Government of Sri Lanka, nor does he claim to have a significant profile that would draw additional attention of the Sri Lankan authorities. In addition, according to the information provided by the complainant, his mother and three sisters with their families live in Sri Lanka unharmed.

10.9 The Committee notes that, attached to the complainant's additional submission of 6 August 2015, was a copy of his request for ministerial intervention to the Australian authorities dated 15 June 2015 and a copy of a police report from the Information Book of Negombo Police Station. According to the English translation of the police report, which was provided by the complainant, he was arrested on 17 September 2010 for suspected affiliation to the LTTE and he was released on or before 20 September 2010. The complainant was instructed to report to the station and sign the police book every Sunday. Since he had failed to report to the station, a police inspector ordered his arrest to ensure that he reported to the police. The Committee notes that the document does not contain a date of issue. It also notes the complainant's explanation in his request for ministerial intervention of 15 June 2015 that he was served with a copy of the report upon release from detention in September 2010; however, according to his additional comments of 16 October 2015, the report was issued on the day of his arrest. Moreover, according to the English

translation of the report that the complainant provided, the Inspector of Police gave instructions to arrest the complainant because he had failed to report to the police as ordered after his release. Furthermore, in his comments of 16 March 2015, the complainant maintained that he was not provided with any documents concerning his detention, as the police did not "file the case" and that he has provided all the information concerning his persecution and all available documents in support of his claims. However, in his request for ministerial intervention of 15 June 2015, he submitted that he had been in possession of a copy of the report since his release in September 2010.

10.10 In that connection, the Committee notes the State party's submission that its domestic authorities had also assessed the said report and did not accept it as genuine, and concluded that it was not credible that the complainant had not submitted the document at an earlier stage while his protection claims were being assessed or reviewed. The Committee also observes that, in his comments of 8 November 2015, the complainant submitted that a lawyer had visited the Negombo Police Station and verified the authenticity of the police report. However, the Committee notes that, according to the copy of the lawyer's letter dated 9 October 2015, the lawyer had not seen the original police report and had merely assessed the copy of the report that was sent to him by the complainant and concluded that it could have been issued by the Sri Lankan authorities. In any event, notwithstanding the issues regarding the authenticity of the police report, the Committee is of the view that the lawyer's letter in question does not bring any additional information regarding the above-mentioned inconsistencies surrounding the report.

10.11 Regarding the complainant's general claim that he risks being subjected to torture upon return to Sri Lanka owing to his status as a failed asylum seeker, the Committee, while not underestimating the concerns that may legitimately be expressed with respect to the current human rights situation in Sri Lanka and treatment of, inter alia, failed asylum seekers from oversees, recalls that the occurrence of human rights violations in his or her country of origin is not sufficient in itself to concluded that a complainant runs a personal risk of torture.[16] In addition, the Committee notes that, in its assessment of the complainant's asylum application, the State party's authorities also considered the possible risk of ill-treatment of failed asylum seekers upon return to Sri Lanka and is of the view that, in the present case, the State party's authorities gave appropriate consideration to the complainant's present claim.

10.12 In the light of the above, the Committee recalls that according to its general comment No. 1, the burden of presenting an arguable case lies with the author of a communication (para. 5). In the Committee's opinion, in the present case, the complainant has not discharged this burden of proof.[17] Furthermore, the complainant has not demonstrated that the State party's authorities that considered the case failed to conduct a proper investigation into his allegations.[18]

11. In the light of those considerations, the Committee concludes that the complainant has not adduced sufficient grounds for it to believe that he would run a real, foreseeable, personal and present risk of being subjected to torture upon return to Sri Lanka.[19]

---

[16] See, for example, communication No. 426/2010, *R.D. v. Switzerland*, decision adopted on 8 November 2013, para. 9.2.

[17] See communication No. 429/2010, *Sivagnanaratnam v. Denmark*, decision adopted on 11 November 2013, paras. 10.5 and 10.6.

[18] See, for example, communication No. 571/2013, *M.S. v. Denmark*, decision adopted on 10 August 2015, para. 7.9.

[19] Ibid., para. 8.

12. The Committee, acting under article 22 (7) of the Convention, concludes that the complainant's removal to Sri Lanka by the State party would not constitute a breach of article 3 of the Convention.